

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

JORGE M. PARDO, M.D.

Case No. 91-10680 K

Debtor

JAMES V. CALCE

Plaintiff

-vs-

AP 93-1263 K

JORGE M. PARDO, M.D.

Defendant

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT

The Debtor seeks summary judgment dismissing this Complaint. Such relief is denied.

Although it appears to be without dispute that the Debtor's own representations to the Plaintiff, whether accurate or not accurate, were minimal, there is substantial dispute regarding the nature and scope of the Debtor's participation in the various activities, undertaken by others, from which he benefitted.

As argued by Plaintiff's counsel, this Court has declined "slavish adherence" to the "five elements of fraud," and has punished "dishonest methods or schemes ... trick, chicane or overreaching," even where no false representations are made. *In re Shanahan*, 151 B.R. 45, 46-4 (Bankr. W.D.N.Y. 1993).

Partly because of the speech patterns of the Debtor, who was not born in the United States, it is difficult for the Court to evaluate the testimony captured in the transcripts of deposition.

The Court would benefit from observing his testimony, and the testimony of the Plaintiff. Consequently, the Motion for Summary Judgment is denied.

The discovery deadline is now extended to November 15, 1994. This matter is set for one day of trial on December 6, 1994 at 9:00 a.m. Mark exhibits at 8:45 a.m. There shall be a final pretrial conference on November 29, 1994 at 9:00 a.m. at which the possibility of settlement will be explored. Parties are to be available by telephone if counsel is not given settlement authority.

SO ORDERED.

Dated: Buffalo, New York
October 7, 1994

/s/Michael J. Kaplan

U.S.B.J.